

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

PROTECTMAX, LLP, .  
Plaintiff, . Case No. 11-cv-05607  
vs. .  
MILMAN, et al., . Newark, New Jersey  
Defendants. . November 30, 2011  
.

TRANSCRIPT OF HEARING  
Settlement Conference  
BEFORE THE HONORABLE PATTY SHWARTZ  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Mr. Garri Milman

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1 (Commencement of proceedings at 5:48 P.M.)

2

3 THE COURT: We're here in PROTECTMAX versus Milman,  
4 Civil No. 11-5607. May I have an appearance for the  
5 plaintiff, please.

6 MR. GOLDIN: May it please the Court, Ely Goldin  
7 from Fox Rothschild on behalf of the plaintiff PROTECTMAX.

8 THE COURT: And on behalf of the defendants.

9 MR. BORSEN: Good evening, Your Honor, Andrew  
10 Borsen of Gambourg & Borsen on behalf of defendant,  
11 Mr. Milman, CNN USA Trading, Svetlana Ploskina, Easy Leasing  
12 of Miami, Immigration Services for New Americans, and Fortuna  
13 Entertainment Ltd.

14 THE COURT: Thank you. As everyone is aware, we've  
15 been working together since about 3:00, 3:15 tonight. It's  
16 not about quarter to six, and it's been reported to the Court  
17 that the parties have reached a resolution. I know that the  
18 representative of the plaintiff primarily speaks Russian. So  
19 counsel, how would you like to proceed to ensure that your  
20 client understands the nature of these proceedings and the  
21 Court's purpose?

22 MR. GOLDIN: Your Honor, my client and I have  
23 discussed all of the terms that have been agreed upon during  
24 the break and before we went on the record. My client is  
25 fully in agreement with them, and I've been authorized to

1 articulate and accept those terms.

2 THE COURT: My practice generally is -- this is for  
3 the benefit of both the clients -- is to ask after the terms  
4 are recited on the record, to make sure each of the clients  
5 understand the nature of the terms, they've had enough time  
6 to speak to their lawyers, and that they understand this is a  
7 full and complete resolution of the case. How do you want me  
8 to handle that as it relates to your client?

9 MR. GOLDIN: If your Your Honor would like to  
10 colloquy, I will translate in realtime.

11 THE COURT: Very good. All right. Well, why don't  
12 we do this. Why don't we have you, if it's all right, place  
13 on the record, the terms of the settlement, and then I'll  
14 turn it over to each -- your adversary first and then each of  
15 the clients. So, counsel, go ahead.

16 MR. GOLDIN: Okay. Starting with the financial  
17 terms, the parties have agreed as follows. First, the  
18 defendants and -- and we'll articulate who they are, shall  
19 pay the sum of \$375,000 in full and final settlement of all  
20 claims asserted by the plaintiffs in this action -- by the  
21 plaintiff in this action. That sum is to be paid as follows.  
22 The amount of \$25,000 shall be paid within 30 days of the  
23 execution of a settlement agreement that will contain among  
24 other things mutual general releases. After that, on a  
25 monthly basis for a period of 18 months, the defendants will

1 pay \$3,100. Following that 18-month period, the payments  
2 shall increase to \$4,100, and those shall continue for a  
3 period of 42 months, such that, this is a five-year payout,  
4 and any amount left over at the end of the five-year being  
5 the difference between the 3100 paid over 18 months, the 4100  
6 paid over 42 months, and the \$25,000 upfront payment, the  
7 difference between that and the 375 will be a balloon that'll  
8 be due at the end of the five years.

9 THE COURT: Okay.

10 MR. GOLDIN: May I continue?

11 THE COURT: Please do.

12 MR. GOLDIN: All right. In addition, in terms of  
13 non-financial terms, payments will be due generally on the  
14 first of each month subject to a five-day grace period.

15 MR. BORSEN: Could we make it 10-day?

16 MR. GOLDIN: Subject to a 10-day grace period.  
17 Upon expiration of the 10-day grace period, if payment has  
18 not been tendered, there will be a notice of default and  
19 another 10-day opportunity to the cure.

20 The plaintiff will receive a consent judgment in  
21 the amount of \$454,000, which the plaintiff will hold in  
22 escrow and use in the event of an uncured or non-cured  
23 default.

24 In terms of additional non-financial terms, the  
25 obligations under the settlement agreement will be secured by

1 a mortgage on Mr. Milman and Mrs. Milman's real estate  
2 located in the Mill Basin section of Brooklyn, New York, and  
3 the mortgage will be in the amount of \$454,000, the same as  
4 the consent judgment. During the repayment term, Mr. Milman  
5 and his spouse shall take no action to impair the collateral,  
6 meaning there'll be no junior liens attached, nor will they  
7 allow Mortgages 1 and 2, which stand ahead of our client, to  
8 increase in value, thereby decreasing the available equity.  
9 The obligations under this agreement will be  
10 non-dischargeable under § 727 of the bankruptcy code to the  
11 to the extent allowed by law. And Mr. Milman shall not  
12 contest the non-dischargeability of this debt in any  
13 bankruptcy proceedings.

14 In addition, we've agreed that the Court shall  
15 retain enforcement jurisdiction over this action for as long  
16 as the parties have unresolved and continuing obligations to  
17 each other under the agreement.

18 Finally, in the event of a default that requires  
19 enforcement of the rights under this agreement, including  
20 without limitation, the mortgage, the parties have agreed  
21 that they will work cooperatively with one another to sell  
22 the Mill Basin, Brooklyn, New York, property through a  
23 Realtor on a -- in a cooperative fashion such that the real  
24 estate is sold as something other than a distressed sale or  
25 foreclosure in order to maximize value and maximize the

1 opportunity for distribution, both to the first and second  
2 mortgages, to our client, and also to Mr. Milman to the  
3 extent that equity exists.

4 And my belief is that covers all of the material  
5 terms of this agreement.

6 THE COURT: Okay. If I could turn over to defense  
7 counsel, is that your understanding of the agreement that's  
8 been reached here today?

9 MR. BORSEN: Your Honor, there are some corrections  
10 with this agreement.

11 The first is the 454,000, that will be held in case  
12 of default minus any payments made.

13 THE COURT: Right.

14 MR. GOLDIN: Agreed.

15 MR. BORSEN: The other issue that I have is I wrote  
16 down that the total settlement is 370,000. I believe counsel  
17 said 375,000.

18 THE COURT: I heard 370, but I think the agreement  
19 is 3, 7, zero.

20 MR. BORSEN: Right.

21 MR. GOLDIN: The agreement is 3, 7, zero. If I  
22 said 375, I apologize; I misspoke.

23 MR. BORSEN: Okay. Right. That's -- that's the  
24 understanding. The only thing to make clear for the record,  
25 Your Honor, is the only stipulation is the consent judgment

1 will be held against Mr. Milman, not the remaining  
2 defendants.

3 THE COURT: I don't know whether or not that term  
4 was discussed.

5 MR. GOLDIN: I thought we agreed it was against  
6 Mr. Milman and his spouse so as to prevent entireties  
7 problems.

8 MR. BORSEN: Right, to the extent that his  
9 spouse -- right to the extent to prevent the entirety  
10 problems, to the extent that she's an owner of the property  
11 located at Mr. Milman's property.

12 THE COURT: Counsel.

13 MR. GOLDIN: I think we're saying the same thing.  
14 The consent judgment will be a judgment that will hold in  
15 escrow, and the judgment debtors on the consent judgment will  
16 be Mr. Milman and his spouse.

17 MR. BORSEN: Well, I think there's a  
18 differentiation, because in order to prevent the entireties  
19 issue, if -- if plaintiffs were to sell the home in Mill  
20 Basin, certainly that consent judgment would have to include  
21 Mr. Milman's spouse. However, to the extent that plaintiff  
22 seeks pure collection of the debt without selling of the  
23 home, we do not agree on his spouse having personal liability  
24 in this -- in this case. Just to the extent that she's  
25 securing -- or she's signing the settlement agreement as it



1 relates to the house, because she is the record owner of the  
2 home alongside Mr. Milman.

3 THE COURT: Counsel.

4 MR. GOLDIN: I'm not sure how you can separate the  
5 two, be responsible for real estate in the event of a default  
6 and not be responsible otherwise. Their house is the only  
7 collateral.

8 THE COURT: And the consent judgment would operate  
9 as lien on the house anyway.

10 MR. GOLDIN: Yeah, consent judgment --

11 THE COURT: Assuming the worst, and I don't want to  
12 necessarily assume the worst, but assuming the worst --

13 MR. BORSEN: That is, Your Honor.

14 THE COURT: -- that's what ends up happening is the  
15 consent judgment would end up being a lien on the house, so  
16 she could lien -- there would be a lien -- you'd have to cure  
17 that lien to sell the house anyway.

18 MR. BORSEN: Correct.

19 THE COURT: So what's the difference?

20 MR. BORSEN: Well, the difference is that assuming  
21 that --

22 THE COURT: If the house is never -- not on the --  
23 not available or they sell it or whatever --

24 MR. BORSEN: Well, assuming that --

25 THE COURT: -- she would have a personal liability.

1 MR. BORSEN: Correct, that in the worst-case  
2 scenario.

3 THE COURT: So are you looking to hold her  
4 personally liable -- for decide the house. Assume there was  
5 no house. Would you be looking to hold her personally  
6 liable? Or would you be satisfied to have that consent  
7 judgment be against Mr. Milman and all the other corporate  
8 parties.

9 MR. GOLDIN: Your Honor, the deal was that it's  
10 husband and wife who are settling this case.

11 THE COURT: Got it.

12 MR. GOLDIN: That was my understanding of the deal.

13 THE COURT: Okay. So the -- from your point of  
14 view, you need to have the consent judgment in the names of  
15 both of them.

16 MR. GOLDIN: Yes.

17 THE COURT: Okay.

18 MR. BORSEN: Your Honor, that was not the  
19 understanding. The understanding was that she would be  
20 liable to the extent that she's the property owner of the  
21 home. We never discussed Mr. Milman's wife as personally  
22 liable.

23 THE COURT: She's a party to this case; right?

24 MR. BORSEN: She is a party to this case.

25 MR. GOLDIN: And in settlement discussions, I

1 expressly said that both would have to be signatories to the  
2 settlement agreement.

3 MR. BORSEN: And which is fine. To the extent that  
4 you want to enforce the judgment against the house, or you  
5 want to sell the house, plaintiffs wants [sic] to sell the  
6 house. But to the extent you seek pure collection from the  
7 wife, we're not in agreement to that. We're -- we discussed  
8 it just in terms of the problems with the entirety.

9 MR. GOLDIN: But entires is a problem that goes  
10 beyond real estate. Entires is a problem that protects  
11 all assets. And if there's -- if something happens and the  
12 house is destroyed by fire and there's no insurance on it and  
13 the collateral vanishes into thin air, then all we would have  
14 is a consent judgment against Mr. Milman individually, which  
15 we could not use in any way to go after any other assets, and  
16 that would frustrate the purpose of the settlement agreement.

17 MR. BORSEN: May I have a moment to speak with my  
18 client?

19 THE COURT: Sure. Yup.

20 (Pause in proceedings)

21 MR. BORSEN: Your Honor, may we approach?

22 THE COURT: You sure may. We're going to go off --  
23 we'll pause the record.

24 (Recess: 5:59 P.M. to 6:02 P.M.)

25 THE COURT: All right, counsel, thank you for

1 thinking this outside the box. Let me hear in light of this  
2 concern about the confession of judgment, how we will modify  
3 that one term.

4 MR. GOLDIN: Your Honor, we've agreed as follows.  
5 The -- Mr. Milman's spouse, Svetlana Ploskina,  
6 P-l-o-s-k-i-n-a, will be a named party on the consent  
7 judgment, and she will be a signatory --

8 THE COURT: You mean settlement agreement?

9 MR. GOLDIN: Excuse me. To the -- to the  
10 settlement agreement. She -- and she'll be a signatory to  
11 whatever documents are necessary to give plaintiff a properly  
12 perfected security interest and lien in the New York real  
13 estate.

14 In addition, Mr. Milman and his spouse will waive  
15 to the fullest extent possible any protections afforded to  
16 them by the laws of entireties, the laws of homestead, or any  
17 similar laws in any jurisdiction we may have to enforce this  
18 judgment, and they're all allowed to be enforced,  
19 notwithstanding the fact that Mr. Milman remains married,  
20 such that any assets owned by Mr. Milman that are subject to  
21 execution will be subject to execution without any defenses  
22 being raised at his entireties property and exempt. And then  
23 finally, Mr. Milman has agreed that during the pendency of  
24 this settlement agreement, he shall maintain hazard insurance  
25 on the New York real estate.

1 THE COURT: Okay. Counsel, is that your  
2 understanding of how that issue's been resolved?

3 MR. BORSEN: That is, Your Honor, with the  
4 exception that Ms. Svetlana Ploskina shall not be personally  
5 liable under the settlement agreement, and she'll only be  
6 liable to the extent articulated by counsel with regard to  
7 perfecting security interests in the real estate property and  
8 waiving the issue with entireties.

9 MR. GOLDIN: Yes.

10 THE COURT: And she also can't do anything to  
11 compromise the value of the property or impair it or anything  
12 like that.

13 MR. BORSEN: Absolutely correct, Your Honor.

14 MR. GOLDIN: So, for the sake of clarity, if -- if  
15 the New York real estate has to be liquidated, and the  
16 proceeds are then used to distribute to the senior mortgage  
17 holders, to my client, et cetera, she's liable in that sense  
18 that those proceeds are used to satisfy the obligation.

19 MR. BORSEN: Yes --

20 THE COURT: Yes.

21 MR. BORSEN: -- to that extent. But to the extent  
22 she has her own assets, she is not liable for her own  
23 personal assets.

24 MR. GOLDIN: Understood. But there will be a  
25 marital carveout or entireties carveout in event of

1 liquidation of the New York -- of the New York property.

2 MR. BORSEN: Correct.

3 MR. GOLDIN: And we'll prepare appropriate spousal  
4 waivers to be attached to the settlement agreement.

5 THE COURT: Okay. Let me ask your client: Sir, do  
6 you understand the nature of the agreement that's been  
7 reached?

8 MR. BORSEN: If I -- if I may have a moment with my  
9 client?

10 THE COURT: Sure. And I'm going to ask counsel for  
11 the plaintiff to do the same thing, confer with his client.

12 (Pause in proceedings)

13 MR. BORSEN: Your Honor.

14 THE COURT: Yes, sir.

15 MR. BORSEN: If I may, my client has concerns, and  
16 I think he would like to address the Court with those  
17 concerns. I think my client is concerned that his wife may  
18 have personal liability with regard to this case. And I  
19 explained to my client that his wife does not have personal  
20 liability with regard to this case except for to the extent  
21 that the house -- she would not -- she would cooperate fully  
22 to -- in case of default, to help or assist plaintiff in  
23 perfecting his security interest in the home.

24 THE COURT: Let me see if I can articulate what I  
25 understand to be the obligations of your wife.

1 MR. BORSEN: Thanks.

2 THE COURT: And I'll ask each of the lawyers to  
3 tell me whether I'm articulating it correctly.

4 The first obligation she would have is sign  
5 whatever documents are necessary to make clear that she  
6 understands that the real estate that you both own is being  
7 used to secure this dollar amount, the 3 -- in this case,  
8 it's going to be a full amount of 454. Right? But you're  
9 only obligated to pay 370. So that's the first thing she's  
10 got to do, she's going to have to sign the paperwork.

11 The second thing that she's going to have to do is  
12 sign a document that says that she understands that if the  
13 real estate is sold, the dollars that have to be used to pay  
14 from the sale of the house, are obviously going to have to  
15 satisfy the first and second mortgage holders, and then  
16 satisfy this debt. And she can't come back and say that  
17 under New York state law or some other state law, that she  
18 shouldn't be responsible because she should get her half of  
19 the house, hypothetically, because under our -- under this  
20 agreement, she would be agreeing that any dollars that she  
21 may have independent interest of, she can't claim belong to  
22 her as it relates to the sale of the house, that any of the  
23 money after the first mortgage is paid and the second  
24 security is paid, this gets paid next. Then whatever's left  
25 after that, it's up to you guys to deal with.

1           That's my understanding of the -- of her  
2 obligations.

3           The final thing is that to the extent there would  
4 be other real property that somehow could be used to satisfy  
5 this debt, that she would not try to argue that some piece of  
6 it is hers and it doesn't belong to the marriage, but a lot  
7 of that is going to be dictated by what the state law is.

8           But what I've been told by your lawyer during some  
9 of our informal discussions is that this is your family home.  
10 Your children live there, you live there, you've lived there  
11 since late '90s. I gather there is no intent for you folks  
12 to do something to this house to somehow destroy it or not  
13 try to keep it in a good way and keep up with all your  
14 obligations because you want to stay in this house.

15           Am I correct about that? Okay. Did I explain the  
16 obligations of the wife based on plaintiff's --

17           MR. GOLDIN: You did, Your Honor.

18           MR. BORSEN: Yes, thank Your Honor.

19           THE COURT: All right. Sir, do you understand?  
20 Does that -- he's nodding his head yes? We're on the tape,  
21 so you have to answer with words. Does that address the  
22 concerns you were expressing to your lawyer?

23           MR. MILMAN: Yes.

24           THE COURT: Okay. Did you have enough time to  
25 speak to your lawyer about this case?



1 MR. MILMAN: Yes.

2 THE COURT: Do you understand that without this  
3 settlement, you might be obligated to pay more money, expend  
4 more resources on this litigation, or you can win the case  
5 and have to pay nothing, but at a minimum, a settlement gives  
6 you certainty. Do you understand that?

7 MR. MILMAN: Yes.

8 THE COURT: Okay. Do you have any questions that  
9 you want to ask the Court?

10 MR. MILMAN: No.

11 THE COURT: Okay. Counsel, is there anything else  
12 you'd like me to inquire of your client before I turn it over  
13 to the plaintiff? On behalf of the defendant? Do you want  
14 me to inquire anything else?

15 MR. BORSEN: That is all, Your Honor.

16 THE COURT: Okay. On behalf of the plaintiff, if  
17 you could translate for me, please.

18 MR. GOLDIN: I will.

19 THE COURT: Thank you.

20 Have you had a chance to review all of the terms of  
21 this settlement with your attorney?

22 MR. GOLDIN: (Translates.) Yes.

23 THE COURT: Do you understand the nature of this  
24 settlement?

25 MR. GOLDIN: (Translates.) Yes.

1 THE COURT: Do you understand that you could take  
2 this case all the way to trial, get more money, less money or  
3 no money at all?

4 MR. GOLDIN: (Translates.) Yes, I understand.

5 THE COURT: And you understand that this is a  
6 resolution that ends the case? Even though you're not going  
7 to be paid for a total of five years, from the Court's point  
8 of view, the case is over?

9 MR. GOLDIN: (Translates.) Yes, I understand.

10 THE COURT: Do you also understand that the only  
11 help the Court can give after this point is to enforce the  
12 terms of the settlement?

13 MR. GOLDIN: (Translates.) Yes, I understand.

14 THE COURT: Are you satisfied with your assistance  
15 of your attorney?

16 MR. GOLDIN: (Translates.) Satisfied, satisfied,  
17 satisfied.

18 (Translates.) Yes, I am.

19 THE COURT: Okay. Is there anything else you'd  
20 like me to inquire of your client about?

21 MR. GOLDIN: No, not from me, Your Honor.

22 THE COURT: All right. Gentlemen, then I will  
23 report to the United States District Judge this case has been  
24 resolved. Her Honor will enter her form of the 60-day order,  
25 which basically gives you an opportunity to pull this all

1 together, but I'm sure it's going to be done faster than 60  
2 days, without prejudice to come back before the Court for the  
3 purposes of enforcing the settlement.

4 So that will be the Court's order. So thank you  
5 very much time tonight.

6 MR. BORSEN: Thank you very much, Your Honor.

7 MR. GOLDIN: Thank you for your time, Your Honor.

8 THE COURT: Okay.

9 (Conclusion of proceedings at 6:13 P.M.)  
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March 7, 2012

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